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DOC # 102



1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

11-CR-424 (NRB)

5 EARL SETH DAVID, GULAY CIBIK,  
6 REFAEL BRODJIK, ALEXANDRA  
7 URBANEK, ABRAHAM FLAM, ARYEA  
8 YEHUDA FLOHR, ANDRE HERBST,  
9 NATHAN SCHWARTZ, HAROLD  
10 TISHLER, CHAIM WALTER, MAYER  
11 WEBER,

**Original**

12 Defendants.

Conference

13 New York, N.Y.  
14 January 30, 2012  
15 4:11 p.m.

16 Before:

17 HON. NAOMI REICE BUCHWALD,

18 District Judge

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## 1 APPEARANCES

2 PREET BHARARA

3 United States Attorney for the  
4 Southern District of New York

JOHN M. REH

5 Assistant United States Attorney

6 MOSKOWITZ &amp; BOOK

Attorneys for Defendant Earl Seth David

7 BY: AVRAHAM C. MOSKOWITZ, ESQ.

8 DONALDSON &amp; CHILLIEST

Attorneys for Defendant Gulay Cibik

9 BY: X.R. DONALDSON, ESQ.

10 DONALD duBOULAY, ESQ.

Attorney for Defendant Refael Brodjik

11 KOSTELANETZ &amp; FINK

Attorneys for Defendant Alexandra Urbanek

12 BY: SHARON MCCARTHY, ESQ.

JULIET FINK, ESQ.

13 JAMES T. MORIARTY, ESQ.

Attorney for Defendant Abraham Flam

14 ROGER BENNETT ADLER PC

15 Attorneys for Defendant Aryea Yehuda Flohr

16 BY: ROGER B. ADLER, ESQ.

DAVID GORDON, ESQ.

17 Attorney for Defendant Andre Herbst

18 PETER C. BRILL, ESQ.

Attorney for Defendant Nathan Schwartz

19 PAUL GREENFIELD, ESQ.

20 Attorney for Defendant Harold Tishler

21 JACOB LAUFER P.C.

Attorneys for Defendant Chaim Walter

22 BY: JACOB LAUFER, ESQ.

23 HAFETZ NECHELES &amp; ROCCO

Attorneys for Defendant Mayer Weber

24 BY: SUSAN NECHELES, ESQ.

NOAH SHELANSKI, ESQ.

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1 (In open court)

2 (Case called)

3 THE CLERK: Is the government present and ready to  
4 proceed?

5 MR. REH: Yes. Good afternoon, your Honor. John Reh  
6 on behalf of the government. I'm joined at counsel table by  
7 Special Agent Deirdre Gordon from Homeland Security  
8 Investigations and Special Agent Ryan Gibbs from the United  
9 States Department of Labor.

10 THE COURT: Is counsel for defendant Earl Seth David  
11 present and ready to proceed?

12 MR. MOSKOWITZ: Yes. Good afternoon, your Honor.  
13 Avraham Moskowitz for Mr. David, who's seated to my left.

14 THE CLERK: Is counsel for defendant Gulay Cibik  
15 present and ready to proceed?

16 MR. DONALDSON: Yes. For Mr. Cibik, Xavier R.  
17 Donaldson. He's seated in the back.

18 THE CLERK: Is defendant Refael Brodjik present and  
19 ready to proceed?

20 MR. duBOULAY: Yes. Good afternoon, your Honor.  
21 Donald duBoulay for Mr. Brodjik, who's present.

22 THE CLERK: Is defendant Alexandra Urbanek present and  
23 ready to proceed?

24 MS. MCCARTHY: Yes. Good afternoon, your Honor.  
25 Sharon McCarthy and my associate Juliet Fink, and Ms. Urbanek

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1 is also in the courtroom.

2 THE CLERK: And counsel for defendant Abraham Flam,  
3 are you present and ready to proceed?

4 MR. MORIARTY: Yes, your Honor. James Moriarty for  
5 Mr. Flam, who's seated in the gallery.

6 THE CLERK: And counsel for defendant Aryea Yehuda  
7 Flohr, are you present and ready to proceed?

8 MR. ADLER: Good afternoon, your Honor. Roger Bennett  
9 Adler, 233 Broadway, New York, New York. I don't know if  
10 Mr. Flohr has gotten here yet because I had it written down as  
11 4:30, and I may have given him misinformation. So I assume  
12 he'll arrive shortly. But we did speak to him today and he did  
13 verify he was coming. If there's any fault, it's mine. I  
14 apologize.

15 THE CLERK: Is counsel for defendant Andre Herbst  
16 present and ready to proceed?

17 MR. GORDON: Yes. David Gordon for Mr. Herbst. He's  
18 here.

19 THE CLERK: Is counsel for defendant Nathan Schwartz  
20 present and ready to proceed?

21 MR. BRILL: Yes. Good afternoon. Peter Brill on  
22 behalf of Mr. Schwartz. Mr. Schwartz indicated he was going to  
23 be a few minutes late, your Honor.

24 THE CLERK: Is counsel for defendant Harold Tishler  
25 present and ready to proceed?

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1 MR. GREENFIELD: Yes, your Honor. Paul Greenfield.  
2 Good afternoon. Mr. Tishler is here in court.

3 THE CLERK: Is counsel for defendant Chaim Walter  
4 present and ready to proceed?

5 MR. LAUFER: Good afternoon, your Honor. Jacob Laufer  
6 appearing for Mr. Walter, and Mr. Walter is present in the  
7 courtroom.

8 THE CLERK: And is counsel for defendant Mayer Weber  
9 present and ready to proceed?

10 MS. NECHELES: Good afternoon, your Honor. Susan  
11 Necheles and Noah Shelanski from Hafetz Necheles & Rocco, and  
12 Mr. Weber is here in court.

13 THE COURT: Okay. Mr. Reh, how are we doing?

14 MR. REH: Your Honor, to date the government has  
15 produced roughly just over 50,000 pages' worth of documents  
16 that are responsive to the matter. In addition to that, we  
17 plan on turning over at least two more batches of discovery,  
18 one today and one probably within the next two weeks, which  
19 comprises the lion's share or all of the computer evidence that  
20 was seized as a result of searches that were conducted at the  
21 law offices of Earl David & Associates in 2009. That  
22 information, we currently have it on hard drives, and having  
23 spoken to the folks at forensics for Department of Labor and  
24 ICE and the folks working here at the Southern District of New  
25 York, we're trying to come up with the best way to give that to

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1 each individual defendant without them having to have any  
2 specific forensic capabilities of their own, meaning we're  
3 going to have to extract data files, PFC files from those  
4 computers and turn those over, and we anticipate that happening  
5 within the next two weeks, your Honor.

6 THE COURT: Did you say you were going to make  
7 production today?

8 MR. REH: Yes. We did already extract e-mails off of  
9 all of the computers that were seized at the various law firm  
10 locations. Those will be turned over, as well as a postarrest  
11 statement that was made by one of the defendants in this case,  
12 your Honor.

13 THE COURT: And it's hard drives that are coming?

14 MR. REH: Yes, your Honor. Those hard drives have  
15 been copied. It's just a matter of me now working with the  
16 forensics folks here at SDNY. It's somewhat complicated, your  
17 Honor, but what we're planning to do -- and this is something I  
18 can address with counsel as well -- is to extract the data  
19 files that are on those hard drives. If any of the attorneys  
20 are still interested in seeing the entire hard drive, we can  
21 make copies of that as well, but that will require them, if  
22 they don't have the capabilities, to purchase software in order  
23 to read those materials. We have done this in past cases.

24 When I say data files, it's most of the files, you know,  
25 including Word documents, picture documents, things of that

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1 nature, that we'll be pulling off of those computers and  
2 distributing within the next two weeks.

3 THE COURT: You don't produce the end of the line  
4 programs?

5 MR. REH: Yes, most of them are system files, your  
6 Honor, so whatever the computer needs to run on, you know,  
7 those files aren't generally included. However, having said  
8 that, we're willing, as long as they're willing to give us  
9 their hard drive, to make a copy of the entire hard drive for  
10 them.

11 THE COURT: So counsel, you'll be done reviewing this  
12 in about four weeks; right?

13 That was a joke.

14 So does someone want to speak on behalf the array of  
15 defendants and come up with either a comment or a suggestion  
16 about when we ought to come back?

17 MS. NECHELES: Maybe if I could, because I think that  
18 there's still some question that all the defense counsel had.  
19 Last time we were here we talked about two things, I think.  
20 One was the spreadsheet that the government was going to give  
21 and another was the actual discovery. The spreadsheet -- as  
22 your Honor is aware of, this case involves a tremendous amount  
23 of different files. Many of the defendants are charged with  
24 having written letters, being employers, and written false  
25 letters, so we ask for the government to tell us which of the



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1 aliens those defendants wrote letters for. For example,  
2 Mr. Weber, his only involvement, his only alleged involvement  
3 in this case was to have written false letters that were then  
4 submitted by the law firm. So we asked for identification of  
5 that. We received two spreadsheets with a lot of things, with  
6 a lot of names on it, and we have some questions which we'd ask  
7 the government about which exact cases, and I expect we'll be  
8 getting more answers from the government on that to be able to  
9 straighten that out.

10 But then there is a whole second question about what  
11 files go with each of the alien files, what actual documents go  
12 with the files. So we have spreadsheets which list, for  
13 example, about 350 files, total, or 380, I think, just for my  
14 client alone, alien files, and I have no way right now of  
15 figuring out, or I can't really tell, have you produced  
16 documents relating to that? As far as I can figure out, the  
17 only documents related to those 385 files that have been  
18 produced are computer records, I think from the government  
19 files. But there must be, or I think there must be, actual  
20 hard copies. And that's extremely significant in this case  
21 because the real issue here is whether my client actually  
22 submitted these or whether his name was forged on these  
23 documents, whether this was created by someone else and blamed  
24 on my client. So until we sort of get some sense of that --  
25 and I'm not hearing, in what is being said right now, anything



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1 about where the actual documents are, where the hard copies  
2 are, not the computer files, and when will the hard copies be  
3 produced. So that's one question, I think.

4 And then the next question that comes up really is the  
5 same, and I think it's a question for many of the defendants as  
6 well, is, what Brady material is there on this specific issue  
7 of whether files were forged, whether names were forged by  
8 other people, by co-conspirators, alleged co-conspirators.

9 So I think those are two issues that we've written the  
10 government about, and I know we just wrote them on Friday, so  
11 before we can even really go much further forward, we sort of  
12 need those answered.

13 And then I think there will be significant motions  
14 here about whether this is really one big conspiracy or a spoke  
15 and wheel. For example, for all of the employer defendants  
16 who, all they're alleged to have done was submitted letters,  
17 why are they conspiring with each other? And if they're not  
18 one big conspiracy, this case is improperly joined under  
19 Rule 8(b). They should all be separate, and all of the  
20 defendants who are employers defendants, just because it's a  
21 similar act or same type of thing, would not make joinder  
22 proper here.

23 MR. ADLER: Judge, just briefly, just to add to what  
24 Ms. Necheles has said, I specifically, in a customized informal  
25 discovery letter that I never got a direct response to, made

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1 that distinction between what was filed and what you heard  
2 today was what was seized from the law firm computer. What's  
3 in the law firm computer may have some interest, but (A) it  
4 wasn't responsive to what I asked for, and (B) it isn't  
5 dispositive as to the case where there may have been, as  
6 Ms. Necheles indicated, a number of situations in which  
7 information having been shared with the law firm and perhaps  
8 improper filings made on hypothetically six cases, that the law  
9 firm, for its own reasons and for monetary compensation, used  
10 and recycled that information without the knowledge, consent,  
11 or participation of the employer defendants. So when I heard  
12 today about this massive production, if you listen carefully,  
13 what the source of the production was, it troubles me, because  
14 it's not responsive.

15 THE COURT: What about the first 50,000 pages that  
16 Mr. Reh produced? What about those?

17 MR. DONALDSON: The 50 or 15?

18 THE COURT: I thought it was 50, but maybe I'm wrong.

19 MR. REH: 50, yes, your Honor.

20 MS. NECHELES: We have looked through a lot of stuff,  
21 I mean, it's all on a computer file, and we have found only one  
22 actual hard copy with respect to our client. Now the 385  
23 files, there is one copy that we have, only one document, which  
24 is actually a handwritten document or a document that is not  
25 from a computer, that we've been able to locate out of all of

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1 this with respect to our client. Maybe it's somewhere I  
2 haven't found in discovery because it's obviously difficult to  
3 go through this much on a disc, but I don't think that this  
4 stuff has been produced to us.

5 MR. ADLER: The second piece, I had made a specific  
6 Brady request. I won't go through it all, but Ms. Necheles has  
7 summarized it in terms of, is there information that the  
8 government knows about which would be favorable to the  
9 defendants, consistent with Ms. Necheles' description?

10 For instance, there's a proffer session. Did people  
11 who were working with the firm sometimes submit applications  
12 without the express written consent and signature of the  
13 employers? So there's a genesis and a good faith basis to have  
14 made the request. I never received a response to my Brady  
15 request, either in the initial informal discovery letter in  
16 November or to the one filed I believe earlier this year.

17 MR. MORIARTY: Your Honor, James Moriarty for  
18 Mr. Flam. Just a brief suggestion. I think the actual number  
19 is closer to 60,000 documents that we have so far. My guess  
20 is, we're talking at least another 10, 20, 30,000 documents.  
21 Seems to me that this is one of the classic cases where there's  
22 obviously a huge number of documents that at some point in time  
23 the government is going to have to cull down these documents, I  
24 think -- I'm not telling them how to run this case, obviously.  
25 I cannot imagine them approaching this court and the jury,

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1 saying, "By the way, there are a thousand documents you're  
2 going to have to go through." My guess is that sooner or  
3 later, maybe the answer to a lot of the questions is the  
4 government would go through these and figure out, Mr. Flam,  
5 this is what we have against you, we intend to use against you,  
6 this is the theory behind this. Right now, for instance, I  
7 have lots of documents but very few of them seem to be  
8 relevant. For instance, two, three years' worth of banking  
9 statements that have no particular significance that I can see.  
10 But why should folks spend lots of time going through documents  
11 we don't even know what they're about. So my sense is, if the  
12 government is able to step forward and say, look, we're going  
13 through this process and this is what we think we're going to  
14 use against you and you, it might solve a lot of time problems.

15 MR. LAUFER: Your Honor, if I may, simply to  
16 underscore this *Brady* issue that Ms. Necheles and Mr. Adler  
17 were referring to, we have gone through so many of these  
18 documents. There are companies with which my client had been  
19 associated, and the applications that were made, as we have  
20 seen them, your Honor, were made from addresses in South  
21 Dakota; in Bellingham, Washington; Wilmington, Delaware; and  
22 the like. We've sought, so far in vain, for documents bearing  
23 our client's signature. There's a hundred or more of such  
24 applications, many of them apparently with correspondence going  
25 back and forth between the authorities and this company name in

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1 South Dakota, and in Bellingham, Washington. So I simply rise  
2 to tell your Honor, this Brady issue is really quite  
3 significant. Not to suggest the government is withholding  
4 Brady. I'm not suggesting that at all. What I'm saying is,  
5 there's real concern here that a lot happened behind my  
6 client's back and apparently the backs of other clients here.

7 THE COURT: Mr. Reh, do you want to speak at this  
8 point?

9 MR. REH: Sure, your Honor. Let me first start with,  
10 if I can take a step back for a second.

11 With respect to the -- there's a difference between A  
12 files and applications that were originally submitted to the  
13 Department of Labor. Those applications that were originally  
14 submitted to the Department of Labor, which required a  
15 sponsorship from an employer -- that's the employer defendants  
16 that are in this case -- while they may eventually have become  
17 part of an A file, we believe that the fraud was committed when  
18 those applications were submitted. All of those applications,  
19 to my knowledge, have been turned over to each respective  
20 defendant with respect to any connection they may have had to  
21 that application; namely, their name being on the application,  
22 a business that they were known to be associated with on that  
23 application. The last production that we had made to the  
24 defendants included a spreadsheet with the applications that  
25 were submitted with either a company that was associated with

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1 their defendants or that had their defendant's name on it.

2 THE COURT: Did you give a different spreadsheet to  
3 each defendant?

4 MR. REH: We gave every spreadsheet to every  
5 defendant.

6 So for example, with respect to Mr. Weber, he got  
7 everybody's spreadsheet, including his own. Now in Mr. Weber's  
8 case -- and I can talk about this with Ms. Necheles off line --  
9 there were some applications with roughly 84 applications that  
10 were not included on his spreadsheet, and we're going to work  
11 that issue out. I don't believe that happened with respect to  
12 any of the other defendants.

13 Having said that, there were also then files that were  
14 kept at the law firm that were associated with each of those  
15 applications. When we first met here, we had said to all of  
16 the defense attorneys that they were at any time able to come,  
17 to come look at those files, the files that were seized that  
18 corresponded to those applications. Only one attorney to date  
19 has actually taken us up on that offer and come to take a look  
20 at those files, and I can tell you that there was hundreds -- I  
21 think there's 400, over 400 boxes -- and from looking at those  
22 files myself, a lot of those files include original documents  
23 which would otherwise be included in an alien file. Maybe  
24 perhaps it didn't make it to the alien file. So those are  
25 documents that are at their disposal, they can come look at.



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1 THE COURT: And those are A files or those are --

2 MR. REH: Those are client files that are in the  
3 possession of Homeland Security Investigations, and those  
4 client files correspond, in some instances, or in all  
5 instances, with respect to each defendant, to the applications  
6 that they submitted. So the application to Labor will begin  
7 there and then perhaps any subsequent documents that were filed  
8 to United States Citizenship and Immigration Services as a  
9 result of an approval, etc. So those files are available.

10 Now with respect to the issue that was being addressed  
11 regarding individual signatures on applications, your Honor, we  
12 have a number of witnesses in this case, cooperating witnesses,  
13 and just witnesses in general, who will testify, with respect  
14 to each defendant in this case, that these individuals came to  
15 the law office, were paid for sponsoring aliens who they knew  
16 they were never going to hire, okay, and that they were not  
17 otherwise qualified to fill these jobs.

18 In addition, we will have evidence from witnesses who  
19 will testify that all of these individuals actually brought  
20 mail that was brought to their businesses to the law firm in  
21 order to get the money from the law firm. We'll have witnesses  
22 who will say that they actually paid these individuals or saw  
23 these people, these individuals getting paid.

24 So while I understand sort of the cry for, hey, we  
25 want to see whether or not these signatures were theirs,



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1 ultimately, once these individuals signed up to be sponsors,  
2 knowing what they knew, the fraud was committed then. It's  
3 sort of irrelevant if at some point these signatures were  
4 written by other people.

5 Now having said that, okay, there's no evidence in the  
6 possession of the government that we know of that any of these  
7 defendants' names were signed by other people without their  
8 knowledge. In fact, quite the contrary, the evidence that we  
9 have through various witnesses will show that these individuals  
10 continued to get paid for applications as they were submitted.  
11 This law firm, your Honor, operated from 1996 till 2005. It  
12 operated at times 24 hours a day, seven days a week. You can  
13 imagine, when we went and seized this stuff, it was chaotic  
14 there. Is there a possibility that names were signed when the  
15 people weren't there? That's a possibility. However, having  
16 said that, we don't have any evidence right now that we've  
17 uncovered that suggests that that actually happened.

18 MS. NECHELES: Your Honor, I can address these two  
19 things.

20 First, with respect to the *Brady*, I heard just now  
21 that they have no evidence that these were signed by other  
22 people without the defendants' consent, but I believe that if  
23 they have evidence that the names of my client were signed on  
24 documents. Even if the person who is saying this is saying  
25 that my client had consented, it's still *Brady*, because it's

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1 still evidence that I could use that would be exculpatory.

2 Someone else signed the client's name. So whether they believe  
3 it or not, you know, that would be Brady.

4 MR. REH: And that's my point. We turned over those  
5 applications, your Honor. I mean --

6 MS. NECHELES: No, your Honor. What they turned  
7 over -- and this is the distinction I was making before. The  
8 computer file says that somewhere in our office, the law firm  
9 that's submitting it, has the signed document. That document  
10 has not been turned over. I hear the government --

11 THE COURT: But you can go and look at it.

12 MS. NECHELES: Right. But what the government said  
13 last time -- and I went back and reviewed this a couple times  
14 to try to remember, you know, what exactly happened, because it  
15 was a while ago -- what they said last time was, there's 400  
16 boxes of documents, they were going to begin going through them  
17 and provide us with some sort of overall inventory, which is  
18 why we haven't been down. If we have to, we'll have to do  
19 that. What we spoke about last time and what I understood was  
20 that the government seized all these documents, they were going  
21 to have to go through them anyway for their case, and that they  
22 would begin to, as part of the discovery, provide us with an  
23 inventory because it's tens of thousands of cases. So for us  
24 to begin to go through and try to find --

25 THE COURT: But you're not interested in tens of

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1 thousands of cases.

2 MS. NECHELES: Right, right.

3 THE COURT: You have a client who's associated --

4 MS. NECHELES: But how do I find those files?

5 MR. REH: Your Honor, we turned over the inventory to  
6 the boxes which include the client files. There's over 400  
7 pages of inventory sheets which explain what's in each and  
8 every individual client file.

9 MS. NECHELES: I don't believe that was turned over.

10 MR. MOSKOWITZ: No.

11 MS. NECHELES: I don't believe we've seen all of that.

12 MR. MORIARTY: No. Your Honor, I kept a pretty tight  
13 tab on discovery we have. Perhaps I have 16 or 17 pages of  
14 inventory. 400, absolutely not. Nothing close to that.

15 MR. REH: Well, your Honor, unless I'm mistaken --  
16 I'll go back and look at that, but we have logs, inventory logs  
17 that were made at the time those boxes were initially reviewed,  
18 they were done by agents, and they wrote down essentially what  
19 the contents of those files were. And I'm almost certain --

20 THE COURT: Wrote down the contents of the boxes by  
21 name?

22 MR. REH: By client name and by what was in the file,  
23 your Honor.

24 THE COURT: Literally?

25 MR. REH: Literally. They were very, very --

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1 THE COURT: No. Give me a second.

2 I just want to be clear. I'm not on withering cross.  
3 Are you saying that if there's a file like this that the agent  
4 started at document one and wrote down, you know, this is the  
5 case name, first document, superseding indictment, second one,  
6 letter dated January 12<sup>th</sup> --

7 MR. REH: No, your Honor.

8 THE COURT: I didn't think so.

9 MR. REH: But there is an inventory of each.

10 THE COURT: So basically the inventory is files,  
11 United States v. David; right? Or the inventory is Joe Jones.

12 MR. REH: Right. Yes, your Honor.

13 THE COURT: Okay. And therefore, and you know which  
14 box, from 1 to the 400 -- are there 400 boxes?

15 MR. REH: Yes, your Honor. 325.

16 THE COURT: Okay. 325 boxes. And so if Ms. Necheles  
17 or anyone wanted to figure out where the file for Joe Jones  
18 was, you look at the list of 325 boxes, look for the name Joe  
19 Jones, and then you'd go to box 68 and that's it; is that fair?

20 MR. REH: Yes. Yes, your Honor, it is. I mean, they  
21 would have to look at the inventory list to find the name.

22 THE COURT: I understand that. You have to look at  
23 the inventory list. So has there been a failure of  
24 communication?

25 MS. NECHELES: Yeah. I hear the government. I think

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1 that they're mistaken, that that was not turned over, but I  
2 assume now they'll turn it over and we'll be able to review  
3 these documents.

4 MR. REH: If it hadn't been turned over, your Honor,  
5 then I apologize and it can be done in short order, because I  
6 know for a fact that somebody individually scanned the  
7 inventory.

8 THE COURT: Well, I think all counsel are saying they  
9 didn't get it; is that fair?

10 DEFENSE COUNSEL: Yes.

11 THE COURT: Okay. I'm glad we had this little chat.

12 Okay. So the bottom line was that the place to find  
13 those hard copies was someplace in that 325 boxes, once you've  
14 identified which folder is in which box.

15 MS. NECHELES: It sounds to me, your Honor, like after  
16 this we'll be able to go back and see, you know, before the  
17 next court appearance, whether we are able to finish obtaining  
18 the discovery. Now we'll be able to go down and look through  
19 those files and speak with the government if it's not, but  
20 hopefully we will be able to find what we need.

21 MR. REH: And one more thing, your Honor, is that the  
22 files, the alien files which we're referring to, which would be  
23 now essentially a third file, there were eventually some alien  
24 files. We've requested as many as we can. We requested 400 of  
25 them, and we've received I believe about 90 of them. I know it



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1 seems sort of odd that you request them and you don't receive  
2 them, but a lot of these files are stored in the National  
3 Records Center, a lot of them are held at service locations  
4 across the United States. However, I think that, from having  
5 reviewed the client files myself, I believe there's ample  
6 information that we'll address the concerns of the defense  
7 counsel, although we will continue to try to locate any alien  
8 files that actually were eventually made or brought by the --

9 THE COURT: And as to this issue of who's signing,  
10 presumably if counsel looked for the actual law firm files, the  
11 client files, you would be able to pull out and see the  
12 different documents that were either actually signed or  
13 allegedly signed by your client and see if it appears to be  
14 different signatures.

15 MR. REH: Yes, your Honor.

16 MS. NECHELES: Yes. And I think I just don't  
17 understand this last distinction between -- what are these  
18 other client files?

19 MR. REH: No. They were electronic applications that  
20 were filed with the Department of Labor. Those are just the  
21 applications, the ones you had just pulled out.

22 Secondly, there were client files that were stored at  
23 the law firm, which include a lot of original documents.

24 And then third, the Department of Homeland Security,  
25 more specifically, United States Citizenship and Immigration

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1 Services, also, they have their own A files, or alien files,  
2 that they keep as part of their records. So some of these  
3 individuals who eventually went on to petition through  
4 Citizenship and Immigration Services also had alien files. So  
5 we're making efforts to get all of those alien files as well.

6 MS. NECHELES: And are those just computer records or  
7 are those --

8 MR. REH: Handwritten? Some of each. I mean, there  
9 should be originals in those as well.

10 THE COURT: Mr. Donaldson?

11 MR. DONALDSON: I think that most of my questions have  
12 been answered. My only concern was in fact not the first file,  
13 not the computer-originated file, but the actual A files,  
14 because unfortunately, or fortunately, depending on what your  
15 perspective is, I just did one of these big immigration fraud  
16 cases, and the treasure trove of information came from me going  
17 to the US Attorney's Office and looking through 20 boxes at the  
18 actual A files, and the actual A files were a lot bigger with a  
19 lot more information about the particular person and a lot more  
20 handwritten personal, historical information, and that was, in  
21 my opinion, the most important file because it had the most  
22 information in it. So if they're telling me that there were  
23 400 and they have 90, you're going to have letters in about two  
24 weeks saying that, you know, I went to check but the 310 that  
25 are missing are the ones that I really need. But that's



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1 just --

2 THE COURT: How long ago did you ask for those?

3 MR. REH: We asked a while ago, your Honor. Like I  
4 said, the files that are in the possession of United States  
5 Citizenship and Immigration Services aren't that easy to  
6 procure, and I know from experience --

7 THE COURT: Well, that's comforting.

8 MR. REH: I understand that, your Honor, and we are  
9 making efforts to get that. Having said that, I've reviewed a  
10 number of A files during the course of my time with the  
11 Department of Homeland Security and I can attest to the fact  
12 that the stuff that's in the client files is very similar to  
13 the stuff that would be included in an alien file. Granted  
14 it's probably not the comprehensive, the entire picture, but  
15 there is a lot of those documents.

16 THE COURT: Every alien has a number; right? Every A  
17 file has a number.

18 MR. REH: Yes, your Honor.

19 THE COURT: Therefore, it's not that complicated to  
20 trace things by number. I mean, I appreciate that if it's  
21 living in Iron Mountain or wherever things live, that it  
22 probably takes some time to get it, but the mere fact that it's  
23 in Denver doesn't move me very much. It seems to me you have a  
24 case for and on behalf of this agency that is not unreasonable  
25 to ask them to double their efforts to find things that are

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1 categorized by number and presumably filed numerically. Now  
2 that may be an odd concept, but I suspect that is how they do  
3 it.

4 MR. REH: Yes, your Honor.

5 MR. DONALDSON: I have one more small issue,  
6 logistically. Well, on the last case, when I went to go see  
7 these actual files, that's when I was told I can go see the  
8 files at my leisure. That's not quite right, because you have  
9 to be placed in a room to see the files and you're sitting with  
10 either an agent or paralegal or somebody with you. So if we  
11 have 400 files, presumably we have, I don't know, 12 lawyers, I  
12 don't exactly know logistically how that would work.

13 THE COURT: What I would suggest was that several of  
14 you view it at once. It certainly would reduce the amount of  
15 agent or paralegal time sitting with you, you know? I'm not  
16 saying you have to talk about it with each other, but you can  
17 all be in the room.

18 MR. ADLER: Judge, what about this? I mean, I don't  
19 think it would be so difficult to give the government a list.  
20 I prepared a very simple one-page chart and simply saying,  
21 here's the chart, this reflects the files that you seized off  
22 of the law firm computer, and likely we'll get the boxes, here  
23 are three available dates and times and we will come in --

24 THE COURT: You know what? I don't want to get into  
25 this level of micromanaging the date book.

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1           Okay. So when do you think it makes sense to come  
2 back here?

3           MR. REH: I'd say at least two months, your Honor.

4           MR. MORIARTY: Your Honor, is the government seriously  
5 going to say here that they're going to deal with this case  
6 with 325 boxes of information, they're going to try to  
7 prosecute all of those individual cases of files? Because we  
8 could be here an awfully long time if that's the case. He's  
9 not saying perhaps 60 days from now come back and say we're  
10 going to cull this down to some way because we could -- having  
11 been at some of these cases, certainly it's been my experience  
12 that courts stress to the government that possibility. Can't  
13 make them do it, obviously, but --

14           THE COURT: I assure you that they will not be trying  
15 325 or 400 files, because they would be destroying their own  
16 case because the jury would not be in their seats. They would  
17 be snoozing on the floor.

18           MR. MORIARTY: I don't disagree that your Honor is  
19 exactly right. But in fact, they ought to make this culling  
20 sooner rather than later.

21           THE COURT: Well, I assume -- maybe it's my naivete --  
22 that before they indicted your clients, they collected evidence  
23 against each of them before they chose to, so I assume they  
24 have some kind of idea of what they want to pursue. But seems  
25 to me, from listening to the defendants, that the defense at

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1 least for some people is going to be that, hey, maybe my  
2 client's name was used 20 times or a hundred times but actually  
3 it wasn't authorized and they're not guilty of all that. From  
4 that perspective, does the defense need more rather than less?

5 MR. MORIARTY: I suppose that's one perspective, your  
6 Honor.

7 THE COURT: Okay.

8 MR. MOSKOWITZ: Your Honor, of course, I'm new to the  
9 case and I haven't even gotten through the first production of  
10 materials yet, so I think realistically, given the fact that  
11 the government's first going to make at least one additional  
12 production two weeks from now and then we still have to deal  
13 with the physical documents, I think three months is probably  
14 more realistic and certainly I think still optimistic.

15 THE COURT: Well, I'm not assuming, by the way, that  
16 the mere fact that you come back means that everything is done.  
17 There's no point in coming back too soon in the sense of having  
18 a repetition of the conversation we had. The idea is, let's  
19 create some sufficient data so that some progress is made,  
20 maybe some new issues emerge and we can do something  
21 constructive. That's my only perspective on this. So 90 days  
22 is okay with me, 75 days is okay, whatever.

23 MR. MOSKOWITZ: 90 days I think is --

24 THE COURT: Is there a consensus? Do I hear 90?

25 DEFENSE COUNSEL: Yes.

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1 MR. GORDON: The only problem is, I have a trial  
2 April 23<sup>rd</sup> that's supposed to last several weeks.

3 THE COURT: Okay. Well, let's do this. Shall we come  
4 in the week before then and then ship you off?

5 MR. GORDON: That's fine.

6 THE COURT: Do you want to come in on Thursday,  
7 April 19<sup>th</sup>, at 4:00? Is that okay?

8 MR. MOSKOWITZ: I think that would be fine. I'm just  
9 checking.

10 THE COURT: 4:00, April 19<sup>th</sup>. Okay. Hearing no  
11 objection?

12 All right. I assume that, given the state of  
13 discovery, that there's no objection to excluding the speedy  
14 trial time until the next conference?

15 MR. MOSKOWITZ: No, your Honor.

16 THE COURT: Again, hearing no objection, I find that a  
17 continuance until April 19<sup>th</sup> serves the ends of justice and  
18 outweighs the best interests of the public and the defendants  
19 in a speedy trial in that it will permit additional time for  
20 discovery to be made and for the defendants to review that  
21 discovery. Okay?

22 Very good. Thank you.

23 ALL COUNSEL: Thank you, your Honor.

24 MR. ADLER: And I would like the record to reflect  
25 that Mr. Flohr did arrive.

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1 THE COURT: Yes. I saw some people come in.

2 MR. ADLER: Yes. I just wanted the record to reflect  
3 that.

4 THE COURT: Okay.

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